

STATE OF MICHIGAN
DEPARTMENT OF COMMUNITY HEALTH
Grants and Purchasing Division
320 South Walnut Street
Lansing, Michigan 48913

CONTRACT NO. 391B4300018
Between

THE DEPARTMENT OF COMMUNITY HEALTH

And

NAME & ADDRESS OF VENDOR Illumina, Inc 5200 Illumina Way San Diego, CA 92122 Email: mcrist@illumina.com		TELEPHONE (513) 407-2745 Contact: Maila Crist
MiSeq Systems and Two, One-Year Preventative Maintenance Agreements		
CONTRACT PERIOD: From: 9/12/2014 To: 9/11/2017		
TERMS <u>Net 45 days</u>		
MISCELLANEOUS INFORMATION: The terms and conditions of this Contract, including any applicable information from the vendor's proposal to RFP- 039114B0002536 dated 7/17/2014 are attached. In the event of any conflicts between the specifications, terms and conditions indicated by the State and those indicated by the vendor, those of the State take precedence. Est. Contract Value: \$247,632.00		

FOR THE VENDOR:

Illumina, Inc

Firm Name

Authorized Agent Signature

Authorized Agent (Print or Type)

Date

FOR THE STATE:

Signature

Kim Stephen

Name

Director, Bureau of Budget & Purchasing
Michigan Department of
Community Health

Title

Date

STATE OF MICHIGAN

Contract No. 391B4300018
**MiSeq Systems and Two, One-Year
Preventative Maintenance Agreements**

**EXHIBIT A
STATEMENT OF WORK
CONTRACT ACTIVITIES**

1.0 Requirements

1.1 Specifications

This is a contract for two MiSeq Systems and two, one-year preventative maintenance agreements for each system for the Michigan Department of Community Health (MDCH), Bureau of Laboratories (BOL).

The Contractor must provide the following:

- A. The Contractor must provide the MiSeq system necessary to perform NGS. The equipment must be equivalent to MiSeq and no other brand will be accepted.
- B. The Contractor will be required to furnish all materials and services as may be ordered during the Contract period per a schedule determined by laboratory personnel.
- C. The equipment system must be able to perform Next Generation Sequencing (NGS).
- D. The system must integrate amplification, sequencing and data analysis in a single instrument with a footprint of less than two square feet of bench space.
- E. The instrument must be capable of generating 15Gb of data per run.
- F. The equipment must have high quality scores (Q score >30) at all read lengths.
- G. The equipment must provide on-instrument data analysis, including alignment and variant calling.
- H. Equipment and instrumentation must be serviced by the Contractor.
- I. Evaluation of the space and power requirements required by equipment must be evaluated in the laboratory.
- J. The Contractor must provide instrument repair service within 72 hours of the request.
- K. All software upgrades and training will be included free of charge if the instrument is under an active Basic Product Care Service Plan or higher.
- L. The Contractor must be able to supply all items and services listed in the contract on a schedule determined by the laboratory.
- M. The Contractor must provide equipment and consumables required for training at no cost to MDCH.

1.2 Warranties

The Contractor must provide a one year limited warranty. The Contractor's technical support number is 1-800-809-4566 for reporting warranty issues.

1.3 Recall Requirements and Procedures

The Contractor must promptly notify MDCH, BOL of any recalls. The Contractor must implement any corrective actions regarding recall requirements and procedures.

1.4 Reserved

1.5 Reserved

2.0 Service Levels

2.1 Time Frames

Installation must occur within 30 calendar days from receipt of order. Installation will be considered complete when equipment is confirmed to be functioning properly by laboratory staff.

2.2 Delivery

The Contractor must deliver "F.O.B. Destination, within Government Premises" with transportation charges prepaid.

2.3 Reserved

2.4 Technical Support and Repairs

The Contractor must provide technical support and the Call Center must make every attempt to resolve the caller's issue within 48 hours. If the caller's issue cannot be resolved, on-site service must be scheduled. The on-site service must be performed within 72 hours of the time the issue was scheduled for service.

2.5 Maintenance

- A. The Contractor must perform onsite maintenance according to the recommended manufacturer maintenance schedule.
- B. The Contractor must perform an annual or recommended manufacturer preventative maintenance, priority in service scheduling, and include all parts, labor and travel.
- C. The Contractor is responsible to conduct all services on the instruments per the manufacturer's instructions.
- D. The Contractor must provide a Service Agreement equivalent in all aspects to the manufacturer's Service Agreement and shall provide services within the equivalent response times for the equipment.
- E. The Contractor must have the capability to render service on-site or off-site, depending on the instrument.
- F. The Contractor must have access to manufacturer instrument parts and possess a thorough knowledge of the operation, maintenance and repair of these instruments.
- G. All services must be rendered by the Contractor who must be a manufacturer authorized service provider.
- H. Service Representatives must have completed manufacturer's authorized service training program.

- I. The Contractor must use original manufacturer replacement parts for preventive maintenance and repairs. If parts are replaced, documentation that parts replaced were original manufacturer replacement parts must be provided with each field service report.
- J. The Contractor must provide a field service report for each visit, whether preventive maintenance or a repair visit.

2.6 Training

The Contractor must provide training as needed to operate and maintain equipment and perform testing at no additional costs.

2.7 Reporting

The Contractor must submit the following written reports to MDCH:

- Technical Bulletin with each update or enhancement that describes the changes.
- Service order with each repair that documents what was done during the repairs.
- Summary report detailing an annual or multi-year service history for each piece of equipment, upon request.

2.8 Meetings

The State may request meetings with the Contractor as it deems appropriate.

3.0 Staffing

3.1 Contractor Representative

The Contractor must appoint one individual specifically assigned to the State of Michigan account that will respond to State inquiries regarding the Contract Activities, answering questions related to ordering and delivery, etc. The Contractor Representative is:

Maila Crist, Territory Account Manager
Email: mcrist@illumina.com
Phone Number: 513-407-2745

The Contractor must notify the Contract Administrator at least 30 calendar days before removing or assigning a new Contractor Representative.

3.2 Customer Service Toll-Free Number

The Contractor's toll-free number for the State to make contact with the Contractor Representative is 1-800-809-4566. The Contractor Representative must be available for calls between the hours of 7:00 am – 5:00 pm (PT), Monday - Friday.

3.3 Technical Support, Repairs and Maintenance

The Contractor's toll-free number for the State to make contact with the Contractor Representative for technical support, repairs and maintenance is 1-800-809-4566. The Contractor must be available for calls and service between the hours of 7:00 am – 5:00 pm (PT), Monday - Friday.

3.4 Reserved

3.5 Security

The Contractor's staff may be required to make deliveries to or enter State facilities. The Contractor must indicate whether it uses uniforms and ID badges, etc. The Contractor must provide vendor and personal ID that confirms identity of the individual upon entering the laboratory gate. The Contractor must perform background checks on employees who will be performing the Contract Activities identified in this Contract. The Contractor must identify the company that will perform background checks, and the scope of the background checks.

The State may require the Contractor's personnel to wear State issued identification badges.

4.0 Pricing

4.1 Price Term

Pricing is firm for the entire length of the Contract.

4.2 Reserved

4.3 Reserved

5.0 Ordering

5.1 Ordering Authorization

The State will issue a written Purchase Order and/or Blanket Purchase Order under the Contract resulting from this RFP. All orders are subject to the Standard Contract Terms.

5.2 Minimum Order

The State requires that there shall not be a minimum order.

6.0 Delivery

6.1 Delivery Programs

The Contractor will ship products based on priority request and MDCH, BOL shipping schedules.

The Contractor must utilize UPS, FedEx, Contractor fleet, or other third party carriers for a transportation method for delivery of the Contract Activities.

Delivery must occur during normal business hours Monday-Friday, 8:00 a.m. - 4:00 p.m.; unless said delivery date is a Federal or State Holiday in which case delivery should be scheduled the next business day.

6.2 Packaging and Palletizing

Packaging must be optimized to permit the lowest freight rate. Shipments must be palletized whenever possible using manufacturer's standard 4-way shipping pallets.

The Contractor must ship according to manufacturer instructions and Federal regulations, including but not limited to, temperature control and enclosed certificates as appropriate. The Contractor's preferred carrier is UPS who is bonded and maintains compliance for commercial transport.

7.0 Acceptance

7.1 Acceptance, Inspection and Testing

The State will use the following criteria to determine acceptance of the Contract Activities: The test system must pass calibration.

7.2 Final Acceptance

If the Contractor's test system does not pass calibration conducted by MDCH Laboratory Staff, the State has no obligation to continue the delivery of new, purchased equipment. The Contractor must provide all consumables necessary for initial calibration during installation.

8.0 Invoice and Payments

8.1 Invoice Requirements

All invoices submitted to the State must include:

- (a) date
- (b) purchase order
- (c) quantity
- (d) description of the Contract Activities
- (e) unit price
- (f) shipping cost (if applicable)
- (g) total price

8.2 Payment Methods

As required by MCL 18.1283, the Contractor must electronically register with the State at <http://www.michigan.gov/cpexpress> to receive electronic fund transfer (EFT) payments.

9.0 Additional Requirements

9.1 Reserved

9.2 Hazardous Chemical Identification

In accordance with the federal Emergency Planning and Community Right-to-Know Act, 42 USC 11001, *et seq.*, as amended, the Contractor must provide a Material Safety Data Sheet listing any hazardous chemicals, as defined in 40 CFR §370.2, to be delivered. Each hazardous chemical must be properly identified, including any applicable identification number, such as a National Stock Number or Special Item Number.

The Contractor must identify any hazardous chemicals that will be provided under any resulting contract.

9.3 Reserved

9.4 Reserved

9.5 Licensing Agreement

The Contractor must provide a copy of any applicable licensing agreement upon request from the MDCH, BOL.

9.6 Reserved

9.7 Reserved

9.8 Reserved

9.9 Reserved

10.0 Reserved

STATE OF MICHIGAN

Contract No. 391B4300018
MiSeq Systems and Two, One-Year
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EXHIBIT B PRICING – 2 Instruments

Description	Product #	Price per Instrument	Total Price for 2 Instruments
MiSeq System	SY-410-1003	\$91,080 when 2 are purchased on the same PO	\$182,160
Training on all steps of the Nextera DNA sample preparation	Nextera XT Sample Prep Customer-Site Training (PN TR-204-0009) Nextera XT Sample Prep kit, 24 spls (PN FC-131-1024) Nextera XT Index kit, 24 indices, 96 spls (PN FC-131-1001) MiSeq 600 cycle sequencing kit, v4 (PN MS-102-3003)	(Qty 1) TR-204-0009: \$4,750 (Qty 1) FC-131-1024: <u>\$0</u> (Qty 1) FC-131-1001: <u>\$0</u> (Qty 1) MS-102-3003: <u>\$0</u>	\$4,750 <i>One training will accommodate up to 4 technicians. Therefore, 1-2 technicians per lab can attend the same Nextera XT training.</i>
Any Shipping Handling Charges	Pre-paid and Charged Back	\$1,821.60	\$1,821.60

EXHIBIT B
PRICING – 2 Instruments

Description	Product #	Price per Instrument	Total Price for 2 Instruments
Contract Year 2 (beginning 09/01/15) Service must include full coverage on all service, parts and labor; one preventative maintenance visit per year including travel.	Illumina Product Care MiSeq <u>Comprehensive</u> Plan (PN SV-420-1003)	\$15,035	\$29,450
Contract Year 3 (beginning 09/01/16) Service must include full coverage on all service, parts and labor; one preventative maintenance visit per year including travel.	Illumina Product Care MiSeq <u>Comprehensive</u> Plan (PN SV-420-1003)	\$15,035	\$29,450
Grand Total			\$247,632.00

STATE OF MICHIGAN

Contract No. 391B4300018
**MiSeq Systems and Two, One-Year
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**EXHIBIT C
STANDARD CONTRACT TERMS**

This STANDARD CONTRACT ("**Contract**") is agreed to between the State of Michigan (the "**State**") and Illumina, Inc. ("**Contractor**"). This Contract is effective on September 12, 2014 ("**Effective Date**"), and unless terminated, expires on September 11, 2017.

The parties agree as follows:

1. **Duties of Contractor.** Contractor must perform the services and provide the deliverables described in **Exhibit A – Statement of Work** (the "**Contract Activities**"). An obligation to provide delivery of any commodity is considered a service and is a Contract Activity.

Contractor must furnish all labor, equipment, materials, and supplies necessary for the performance of the Contract Activities, and meet operational standards, unless otherwise specified in Exhibit A.

Contractor must: (a) perform the Contract Activities in a timely, professional, safe, and workmanlike manner consistent with standards in the trade, profession, or industry; (b) meet or exceed the performance and operational standards, and specifications of the Contract; (c) provide all Contract Activities in good quality, with no material defects; (d) not interfere with the State's operations; (e) obtain and maintain all necessary licenses, permits or other authorizations necessary for the performance of the Contract; (f) cooperate with the State, including the State's quality assurance personnel, and any third party to achieve the objectives of the Contract; (g) return to the State any State-furnished equipment or other resources in the same condition as when provided when no longer required for the Contract; (h) not make any media releases without prior written authorization from the State; (i) assign to the State any claims resulting from state or federal antitrust violations to the extent that those violations concern materials or services supplied by third parties toward fulfillment of the Contract; (j) comply with all State physical and IT security policies and standards which will be made available upon request; and (k) provide the State priority in performance of the Contract except as mandated by federal disaster response requirements. Any breach under this paragraph is considered a material breach.

Contractor must also be clearly identifiable while on State property by wearing identification issued by the State, and clearly identify themselves whenever making contact with the State.

2. **Notices.** All notices and other communications required or permitted under this Contract must be in writing and will be considered given and received: (a) when verified by written receipt if sent by courier; (b) when actually received if sent by mail without verification of receipt; or (c) when verified by automated receipt or electronic logs if sent by facsimile or email.

If to State:	If to Contractor:
Wanda Rademacher Michigan Department of Community Health Purchasing Section 320 South Walnut Lansing, MI 48913 RademacherW@michigan.gov (517) 241-0134	Maila Crist, Account Manager - Midwest Illumina, Inc. 5200 Illumina Way San Diego, CA 92122 mcrist@illumina.com (513) 407-2745

3. **Contract Administrator.** The Contract Administrator for each party is the only person authorized to modify any terms and conditions of this Contract (each a "**Contract Administrator**"):

If to State:	If to Contractor:
Wanda Rademacher Michigan Department of Community Health Purchasing Section 320 South Walnut Lansing, MI 48913 RademacherW@michigan.gov (517) 241-0134	Mark Van Oene, VP Worldwide Sales Illumina, Inc. 5200 Illumina Way San Diego, CA 92122 mvanoene@illumina.com (858) 736-3585

4. **Program Manager.** The Program Manager for each party will monitor and coordinate the day-to-day activities of the Contract (each a "**Program Manager**"):

If to State:	If to Contractor:
Connie Good Michigan Department of Community Health Bureau of Laboratories 3350 N. Martin Luther King Jr. Blvd Lansing, MI 48906 goodc@michigan.gov (517) 335-8058	Maila Crist, Account Manager - Midwest Illumina, Inc. 5200 Illumina Way San Diego, CA 92122 mcrist@illumina.com (513) 407-2745

5. **Performance Guarantee.** Contractor must at all times have financial resources sufficient, in the opinion of the State, to ensure performance of the Contract and must provide proof upon request. The State may require a performance bond (as specified in Exhibit A) if, in the opinion of the State, it will ensure performance of the Contract.
6. **Insurance Requirements.** Contractor must maintain the insurances identified below and is responsible for all deductibles. All required insurance must: (a) protect the State from claims that may arise out of, are alleged to arise out of, or result from Contractor's or a subcontractor's performance; (b) be primary and non-contributing to any comparable liability insurance (including self-insurance) carried by the State; and (c) be provided by a company with an A.M. Best rating of "A" or better and a financial size of VII or better.

Insurance Type	Additional Requirements
Commercial General Liability Insurance	
<u>Minimal Limits:</u> \$1,000,000 Each Occurrence Limit \$1,000,000 Personal & Advertising Injury Limit \$2,000,000 General Aggregate Limit \$2,000,000 Products/Completed Operations <u>Deductible Maximum:</u> \$50,000 Each Occurrence	Contractor must have their policy: (1) endorsed to add "the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees, and agents" as additional insureds using endorsement CG 20 10 11 85, or both CG 2010 07 04 and CG 2037 07 04; (2) include a waiver of subrogation; and (3) for a claims-made policy, provide 3 years of tail coverage.
Umbrella or Excess Liability Insurance	
<u>Minimal Limits:</u> \$5,000,000 General Aggregate	Contractor must have their policy: (1) endorsed to add "the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees, and agents" as additional insureds, and (2) include a waiver of subrogation.
Motor Vehicle Insurance	
<u>Minimal Limits:</u> \$1,000,000 Per Occurrence	
Workers' Compensation Insurance	

<u>Minimal Limits:</u> Coverage according to applicable laws governing work activities.	Waiver of subrogation, except where waiver is prohibited by law.
Employers Liability Insurance	
<u>Minimal Limits:</u> \$100,000 Each Accident \$100,000 Each Employee by Disease \$500,000 Aggregate Disease.	

If Contractor's policy contains limits higher than the minimum limits, the State is entitled to coverage to the extent of the higher limits. The minimum limits are not intended, and may not be construed to limit any liability or indemnity of Contractor to any indemnified party or other persons.

Contractor must: (a) provide insurance certificates to the Contract Administrator, containing the agreement or purchase order number, at Contract formation and within 20 calendar days of the expiration date of the applicable policies; (b) require that subcontractors maintain the required insurances contained in this Section; (c) notify the Contract Administrator within 5 business days if any insurance is cancelled; and (d) waive all rights against the State for damages covered by insurance. Failure to maintain the required insurance does not limit this waiver.

7. **Reserved.**
8. **Reserved.**
9. **Independent Contractor.** Contractor is an independent contractor and assumes all rights, obligations and liabilities set forth in this Contract. Contractor, its employees, and agents will not be considered employees of the State. No partnership or joint venture relationship is created by virtue of this Contract. Contractor, and not the State, is responsible for the payment of wages, benefits and taxes of Contractor's employees and any subcontractors. Prior performance does not modify Contractor's status as an independent contractor.
10. **Subcontracting.** Contractor may not delegate any of its obligations under the Contract without the prior written approval of the State. Contractor must notify the State at least 90 calendar days before the proposed delegation, and provide the State any information it requests to determine whether the delegation is in its best interest. If approved, Contractor must: (a) be the sole point of contact regarding all contractual matters, including payment and charges for all Contract Activities; (b) make all payments to the subcontractor; and (c) incorporate the terms and conditions contained in this Contract in any subcontract with a subcontractor. Contractor remains responsible for the completion of the Contract Activities, compliance with the terms of this Contract, and the acts and omissions of the subcontractor. The State, in its sole discretion, may require the replacement of any subcontractor.
11. **Staffing.** The State's Contract Administrator may require Contractor to remove or reassign personnel by providing a notice to Contractor.
12. **Background Checks.** Upon request, Contractor must perform background checks on all employees and subcontractors and its employees prior to their assignment. The scope is at the discretion of the State and documentation must be provided as requested. Contractor is responsible for all costs associated with the requested background checks. The State, in its sole discretion, may also perform background checks.
13. **Assignment.** Contractor may not assign this Contract to any other party without the prior approval of the State. Upon notice to Contractor, the State, in its sole discretion, may assign in whole or in part, its rights or responsibilities under this Contract to any other party. If the State determines that a novation of the Contract to a third party is necessary, Contractor will agree to the novation, provide all necessary documentation and signatures, and continue to perform, with the third party, its obligations under the Contract.

14. **Change of Control.** Contractor will notify, at least 90 calendar days before the effective date, the State of a change in Contractor's organizational structure or ownership. For purposes of this Contract, a change in control means any of the following: (a) a sale of more than 50% of Contractor's stock; (b) a sale of substantially all of Contractor's assets; (c) a change in a majority of Contractor's board members; (d) consummation of a merger or consolidation of Contractor with any other entity; (e) a change in ownership through a transaction or series of transactions; (f) or the board (or the stockholders) approves a plan of complete liquidation. A change of control does not include any consolidation or merger effected exclusively to change the domicile of Contractor, or any transaction or series of transactions principally for bona fide equity financing purposes.

In the event of a change of control, Contractor must require the successor to assume this Contract and all of its obligations under this Contract.

15. **Ordering.** Contractor is not authorized to begin performance until receipt of authorization as identified in Exhibit A.
16. **Acceptance.** Contract Activities are subject to inspection and testing by the State within 30 calendar days of the State's receipt of them ("**State Review Period**"), unless otherwise provided in Exhibit A. If the Contract Activities are not fully accepted by the State, the State will notify Contractor by the end of the State Review Period that either: (a) the Contract Activities are accepted, but noted deficiencies must be corrected; or (b) the Contract Activities are rejected. If the State finds material deficiencies, it may: (i) reject the Contract Activities without performing any further inspections; (ii) demand performance at no additional cost; or (iii) terminate this Contract in accordance with Section 23, Termination for Cause.

Within 10 business days from the date of Contractor's receipt of notification of acceptance with deficiencies or rejection of any Contract Activities, Contractor must cure, at no additional cost, the deficiency and deliver unequivocally acceptable Contract Activities to the State. If acceptance with deficiencies or rejection of the Contract Activities impacts the content or delivery of other non-completed Contract Activities, the parties' respective Program Managers must determine an agreed to number of days for re-submission that minimizes the overall impact to the Contract. However, nothing herein affects, alters, or relieves Contractor of its obligations to correct deficiencies in accordance with the time response standards set forth in this Contract.

If Contractor is unable or refuses to correct the deficiency within the time response standards set forth in this Contract, the State may cancel the order in whole or in part. The State, or a third party identified by the State, may perform the Contract Activities and recover the difference between the cost to cure and the Contract price plus an additional 10% administrative fee.

17. **Delivery.** Contractor must deliver all Contract Activities F.O.B. destination, within the State premises with transportation and handling charges paid by Contractor, unless otherwise specified in Exhibit A. All containers and packaging becomes the State's exclusive property upon acceptance.
18. **Risk of Loss and Title.** Until final acceptance, title and risk of loss or damage to Contract Activities remains with Contractor. Contractor is responsible for filing, processing, and collecting all damage claims. The State will record and report to Contractor any evidence of visible damage. If the State rejects the Contract Activities, Contractor must remove them from the premises within 10 calendar days after notification of rejection. The risk of loss of rejected or non-conforming Contract Activities remains with Contractor. Rejected Contract Activities not removed by Contractor within 10 calendar days will be deemed abandoned by Contractor, and the State will have the right to dispose of it as its own property. Contractor must reimburse the State for costs and expenses incurred in storing or effecting removal or disposition of rejected Contract Activities.
19. **Warranty Period.** The warranty period, if applicable, for Contract Activities is a fixed period commencing on the date specified in Exhibit A. If the Contract Activities do not function as warranted during the warranty period the State may return such non-conforming Contract Activities to the Contractor for a full refund.
20. **Terms of Payment.** Invoices must conform to the requirements communicated from time-to-time by the State. All undisputed amounts are payable within 45 days of the State's receipt. Contractor may only charge for Contract Activities performed as specified in Exhibit A. Invoices must include an itemized statement of all charges. The State is exempt from State sales tax for direct purchases and may be exempt from federal excise tax, if Contract Activities purchased under the Contract are for the

State's exclusive use. Prices are exclusive of all taxes, and Contractor is solely responsible for payment of any applicable taxes.

The State has the right to withhold payment of any disputed amounts until the parties agree as to the validity of the disputed amount. The State will notify Contractor of any dispute within a reasonable time. Payment by the State will not constitute a waiver of any rights as to Contractor's continuing obligations, including claims for deficiencies or substandard Contract Activities. Contractor's acceptance of final payment by the State constitutes a waiver of all claims by Contractor against the State for payment under this Contract, other than those claims previously filed in writing on a timely basis and still disputed.

The State will only disburse payments under this Contract through Electronic Funds Transfer (EFT). Contractor must register with the State at <http://www.michigan.gov/cpexpress> to receive electronic fund transfer payments. If Contractor does not register, the State is not liable for failure to provide payment. Without prejudice to any other right or remedy it may have, the State reserves the right to set off at any time any amount then due and owing to it by Contractor against any amount payable by the State to Contractor under this Contract.

21. Reserved.

22. Stop Work Order. The State may suspend any or all activities under the Contract at any time. The State will provide Contractor a written stop work order detailing the suspension. Contractor must comply with the stop work order upon receipt. Within 90 calendar days, or any longer period agreed to by Contractor, the State will either: (a) issue a notice authorizing Contractor to resume work, or (b) terminate the Contract or purchase order. The State will not pay for Contract Activities, Contractor's lost profits, or any additional compensation during a stop work period.

23. Termination for Cause. The State may terminate this Contract for cause, in whole or in part, if Contractor, as determined by the State: (a) endangers the value, integrity, or security of any location, data, or personnel; (b) becomes insolvent, petitions for bankruptcy court proceedings, or has an involuntary bankruptcy proceeding filed against it by any creditor; (c) engages in any conduct that may expose the State to liability; (d) breaches any of its material duties or obligations; or (e) fails to cure a breach within the time stated in a notice of breach. Any reference to specific breaches being material breaches within this Contract will not be construed to mean that other breaches are not material.

If the State terminates this Contract under this Section, the State will issue a termination notice specifying whether Contractor must: (a) cease performance immediately, or (b) continue to perform for a specified period. If it is later determined that Contractor was not in breach of the Contract, the termination will be deemed to have been a Termination for Convenience, effective as of the same date, and the rights and obligations of the parties will be limited to those provided in Section 24, Termination for Convenience.

The State will only pay for amounts due to Contractor for Contract Activities accepted by the State on or before the date of termination, subject to the State's right to set off any amounts owed by the Contractor for the State's reasonable costs in terminating this Contract. The Contractor must pay all reasonable costs incurred by the State in terminating this Contract for cause, including administrative costs, attorneys' fees, court costs, transition costs, and any costs the State incurs to procure the Contract Activities from other sources.

24. Termination for Convenience. The State may immediately terminate this Contract in whole or in part without penalty and for any reason, including but not limited to, appropriation or budget shortfalls. The termination notice will specify whether Contractor must: (a) cease performance of the Contract Activities immediately, or (b) continue to perform the Contract Activities in accordance with Section 25, Transition Responsibilities. If the State terminates this Contract for convenience, the State will pay all reasonable costs, as determined by the State, for State approved Transition Responsibilities.

25. Transition Responsibilities. Upon termination or expiration of this Contract for any reason, Contractor must, for a period of time specified by the State (not to exceed 90 calendar days), provide all reasonable transition assistance requested by the State, to allow for the expired or terminated portion of the Contract Activities to continue without interruption or adverse effect, and to facilitate the orderly transfer of such Contract Activities to the State or its designees. Such transition assistance may include, but is not limited to: (a) continuing to perform the Contract Activities at the established Contract

rates; (b) taking all reasonable and necessary measures to transition performance of the work, including all applicable Contract Activities, training, equipment, software, leases, reports and other documentation, to the State or the State's designee; (c) taking all necessary and appropriate steps, or such other action as the State may direct, to preserve, maintain, protect, or return to the State all materials, data, property, and confidential information provided directly or indirectly to Contractor by any entity, agent, vendor, or employee of the State; (d) transferring title in and delivering to the State, at the State's discretion, all completed or partially completed deliverables prepared under this Contract as of the Contract termination date; and (e) preparing an accurate accounting from which the State and Contractor may reconcile all outstanding accounts (collectively, "**Transition Responsibilities**"). This Contract will automatically be extended through the end of the transition period.

26. **General Indemnification.** Contractor must defend, indemnify and hold the State, its departments, divisions, agencies, offices, commissions, officers, and employees harmless, without limitation, from and against any and all actions, claims, losses, liabilities, damages, costs, attorney fees, and expenses (including those required to establish the right to indemnification), arising out of or relating to: (a) any breach by Contractor (or any of Contractor's employees, agents, subcontractors, or by anyone else for whose acts any of them may be liable) of any of the promises, agreements, representations, warranties, or insurance requirements contained in this Contract; (b) any infringement, misappropriation, or other violation of any intellectual property right or other right of any third party; (c) any bodily injury, death, or damage to real or tangible personal property occurring wholly or in part due to action or inaction by Contractor (or any of Contractor's employees, agents, subcontractors, or by anyone else for whose acts any of them may be liable); and (d) any acts or omissions of Contractor (or any of Contractor's employees, agents, subcontractors, or by anyone else for whose acts any of them may be liable).

The State will notify Contractor in writing if indemnification is sought; however, failure to do so will not relieve Contractor, except to the extent that Contractor is materially prejudiced. Contractor must, to the satisfaction of the State, demonstrate its financial ability to carry out these obligations.

The State is entitled to: (i) regular updates on proceeding status; (ii) participate in the defense of the proceeding; (iii) employ its own counsel; and to (iv) retain control of the defense if the State deems necessary. Contractor will not, without the State's written consent (not to be unreasonably withheld), settle, compromise, or consent to the entry of any judgment in or otherwise seek to terminate any claim, action, or proceeding. To the extent that any State employee, official, or law may be involved or challenged, the State may, at its own expense, control the defense of that portion of the claim.

Any litigation activity on behalf of the State, or any of its subdivisions under this Section, must be coordinated with the Department of Attorney General. An attorney designated to represent the State may not do so until approved by the Michigan Attorney General and appointed as a Special Assistant Attorney General.

27. **Infringement Indemnification by Contractor.** Subject to these terms and conditions Contractor shall (i) defend, indemnify and hold harmless State against any third-party claim or action alleging that the Product when used for Research Use, in accordance with these terms and conditions, and in accordance with the Product's Documentation and Specifications infringes the valid and enforceable intellectual property rights of a third party, and (ii) pay all settlements entered into, and all final judgments and costs (including reasonable attorneys' fees) awarded against State in connection with such infringement claim. If the Product or any part thereof, becomes, or in Contractor's opinion may become, the subject of an infringement claim, Contractor shall have the right, at its option, to (A) procure for State the right to continue using the Product, (B) modify or replace the Product with a substantially equivalent non-infringing substitute, or (C) require the return of the Product and terminate the rights, license, and any other permissions provided to State with respect the Product and refund to State the depreciated value (as shown in State's official records) of the returned Product at the time of such return; provided that, no refund will be given for used-up or expired Consumables. This Section states the entire liability of Contractor for any infringement of third party intellectual property rights.
28. **Limitation of Liability.** Neither the Contractor nor the State is liable to each other, regardless of the form of action, for consequential, incidental, indirect, or special damages. This limitation of liability does not apply to claims for personal injury or damage to property caused by gross negligence or willful misconduct of the Contractor; to claims covered by other specific provisions of this Contract calling for liquidated damages; or to court costs or attorney's fees awarded by a court in addition to damages after litigation based on this Contract.

29. **Disclosure of Litigation, or Other Proceeding.** Contractor must notify the State within 14 calendar days of receiving notice of any litigation, investigation, arbitration, or other proceeding (collectively, "**Proceeding**") involving Contractor, a subcontractor, or an officer or director of Contractor or subcontractor, that arises during the term of the Contract, including: (a) a criminal Proceeding; (b) a parole or probation Proceeding; (c) a Proceeding under the Sarbanes-Oxley Act; (d) a civil Proceeding involving: (1) a claim that might reasonably be expected to adversely affect Contractor's viability or financial stability; or (2) a governmental or public entity's claim or written allegation of fraud; or (e) a Proceeding involving any license that Contractor is required to possess in order to perform under this Contract.
30. **State Data.** All data and information provided to Contractor by or on behalf of the State, and all data and information derived therefrom, is the exclusive property of the State ("**State Data**"); this definition is to be construed as broadly as possible. Upon request, Contractor must provide to the State, or a third party designated by the State, all State Data within 10 calendar days of the request and in the format requested by the State. Contractor will assume all costs incurred in compiling and supplying State Data. No State Data may be used for any marketing purposes.
31. **Reserved.**
32. **Non-Disclosure of Confidential Information.** The parties acknowledge that each party may be exposed to or acquire communication or data of the other party that is confidential, privileged communication not intended to be disclosed to third parties. The provisions of this Section survive the termination of this Contract.
- a. Meaning of Confidential Information. For the purposes of this Contract, the term "**Confidential Information**" means all information and documentation of a party that: (a) has been marked "confidential" or with words of similar meaning, at the time of disclosure by such party; (b) if disclosed orally or not marked "confidential" or with words of similar meaning, was subsequently summarized in writing by the disclosing party and marked "confidential" or with words of similar meaning; and, (c) should reasonably be recognized as confidential information of the disclosing party. The term "Confidential Information" does not include any information or documentation that was: (a) subject to disclosure under the Michigan Freedom of Information Act (FOIA); (b) already in the possession of the receiving party without an obligation of confidentiality; (c) developed independently by the receiving party, as demonstrated by the receiving party, without violating the disclosing party's proprietary rights; (d) obtained from a source other than the disclosing party without an obligation of confidentiality; or, (e) publicly available when received, or thereafter became publicly available (other than through any unauthorized disclosure by, through, or on behalf of, the receiving party). For purposes of this Contract, in all cases and for all matters, State Data is deemed to be Confidential Information.
 - b. Obligation of Confidentiality. The parties agree to hold all Confidential Information in strict confidence and not to copy, reproduce, sell, transfer, or otherwise dispose of, give or disclose such Confidential Information to third parties other than employees, agents, or subcontractors of a party who have a need to know in connection with this Contract or to use such Confidential Information for any purposes whatsoever other than the performance of this Contract. The parties agree to advise and require their respective employees, agents, and subcontractors of their obligations to keep all Confidential Information confidential. Disclosure to a subcontractor is permissible where: (a) use of a subcontractor is authorized under this Contract; (b) the disclosure is necessary or otherwise naturally occurs in connection with work that is within the subcontractor's responsibilities; and (c) Contractor obligates the subcontractor in a written contract to maintain the State's Confidential Information in confidence. At the State's request, any employee of Contractor or any subcontractor may be required to execute a separate agreement to be bound by the provisions of this Section.
 - c. Cooperation to Prevent Disclosure of Confidential Information. Each party must use its best efforts to assist the other party in identifying and preventing any unauthorized use or disclosure of any Confidential Information. Without limiting the foregoing, each party must advise the other party immediately in the event either party learns or has reason to believe that any person who has had access to Confidential Information has violated or intends to violate the terms of this Contract and each party will cooperate with the other party in seeking injunctive or other equitable relief against any such person.

- d. Remedies for Breach of Obligation of Confidentiality. Each party acknowledges that breach of its obligation of confidentiality may give rise to irreparable injury to the other party, which damage may be inadequately compensable in the form of monetary damages. Accordingly, a party may seek and obtain injunctive relief against the breach or threatened breach of the foregoing undertakings, in addition to any other legal remedies which may be available, to include, in the case of the State, at the sole election of the State, the immediate termination, without liability to the State, of this Contract or any Statement of Work corresponding to the breach or threatened breach.
- e. Surrender of Confidential Information upon Termination. Upon termination of this Contract or a Statement of Work, in whole or in part, each party must, within 5 calendar days from the date of termination, return to the other party any and all Confidential Information received from the other party, or created or received by a party on behalf of the other party, which are in such party's possession, custody, or control; provided, however, that Contractor must return State Data to the State following the timeframe and procedure described further in this Contract. Should Contractor or the State determine that the return of any non-State Data Confidential Information is not feasible, such party must destroy the non-State Data Confidential Information and must certify the same in writing within 5 calendar days from the date of termination to the other party.

33. **Reserved.**

34. **Reserved.**

35. **Reserved.**

36. **Records Maintenance, Inspection, Examination, and Audit.** The State or its designee may audit Contractor to verify compliance with this Contract. Contractor must retain, and provide to the State or its designee and the auditor general upon request, all financial and accounting records related to the Contract through the term of the Contract and for 7 years after the latter of termination, expiration, or final payment under this Contract or any extension ("**Audit Period**"). If an audit, litigation, or other action involving the records is initiated before the end of the Audit Period, Contractor must retain the records until all issues are resolved.

Within 10 calendar days of providing notice, the State and its authorized representatives or designees have the right to enter and inspect Contractor's premises or any other places where Contract Activities are being performed, and examine, copy, and audit all records related to this Contract. Contractor must cooperate and provide reasonable assistance. If any financial errors are revealed, the amount in error must be reflected as a credit or debit on subsequent invoices until the amount is paid or refunded. Any remaining balance at the end of the Contract must be paid or refunded within 45 calendar days.

This Section applies to Contractor, any parent, affiliate, or subsidiary organization of Contractor, and any subcontractor that performs Contract Activities in connection with this Contract.

37. **Product Warranty.** All warranties are personal to the State and may not be transferred or assigned to a third-party, including an affiliate of State. All warranties are facility specific and do not transfer if the Product is moved to another facility of State, unless Contractor conducts such move.
- a. **Warranty for Consumables.** Contractor warrants that Consumables, other than custom Consumables, will conform to their Specifications until the later of (i) 3 months from the date of shipment from Contractor, and (ii) any expiration date or the end of the shelf-life pre-printed on such Consumable by Contractor, but in no event later than 12 months from the date of shipment. With respect to custom Consumables (i.e., Consumables made to specifications or designs made by State or provided to Contractor by, or on behalf of, State), Contractor only warrants that the custom Consumables will be made and tested in accordance with Contractor's standard manufacturing and quality control processes. Contractor makes no warranty that custom Consumables will work as intended by State or for State's intended uses.

- b. **Warranty for Hardware.** Contractor warrants that Hardware, other than Upgraded Components, will conform to its Specifications for a period of 12 months after its shipment date from Contractor unless the Hardware includes Contractor provided installation in which case the warranty period begins on the date of installation or 30 days after the date it was delivered, whichever occurs first (“**Base Hardware Warranty**”). “**Upgraded Components**” means Contractor provided components, modifications, or enhancements to Hardware that was previously acquired by State. Contractor warrants that Upgraded Components will conform to their Specifications for a period of 90 days from the date the Upgraded Components are installed. Upgraded Components do not extend the warranty for the Hardware unless the upgrade was conducted by Contractor at Contractor’s facilities in which case the upgraded Hardware shipped to State comes with a Base Hardware Warranty.
 - c. **Exclusions from Warranty Coverage.** The foregoing warranties do not apply to the extent a non-conformance is due to (i) abuse, misuse, neglect, negligence, accident, improper storage, or use contrary to the Documentation or Specifications, (ii) improper handling, installation, maintenance, or repair (other than if performed by Contractor’s personnel), (iii) unauthorized alterations, (iv) Force Majeure events, or (v) use with a third party’s good not provided by Contractor (unless the Product’s Documentation or Specifications expressly state such third party’s good is for use with the Product).
 - d. **Procedure for Warranty Coverage.** In order to be eligible for repair or replacement under this warranty State must (i) promptly contact Contractor’s support department to report the non-conformance, (ii) cooperate with Contractor in confirming or diagnosing the non-conformance, and (iii) return the Product, transportation charges prepaid to Contractor following Contractor’s instructions or, if agreed by Contractor and State, grant Contractor’s authorized repair personnel access to the Product in order to confirm the non-conformance and make repairs.
 - e. **Sole Remedy under Warranty.** Contractor will, at its option, repair or replace non-conforming Product that it confirms is covered by this warranty. Repaired or replaced Consumables come with a 90-day warranty. Hardware may be repaired or replaced with functionally equivalent, reconditioned, or new Hardware or components (if only a component of Hardware is non-conforming). If the Hardware is replaced in its entirety, the warranty period for the replacement is 90 days from the date of shipment or the remaining period on the original Hardware warranty, whichever is later. If only a component is being repaired or replaced, the warranty period for such component is 90 days from the date of shipment or the remaining period on the original Hardware warranty, whichever ends later. The preceding states State’s sole remedy and Contractor’s sole obligations under the warranty provided hereunder.
 - f. **Third-Party Goods and Warranty.** Contractor has no warranty obligations with respect to any goods originating from a third party and supplied to State hereunder. Third-party goods are those that are labeled or branded with a third-party’s name. The warranty for third-party goods, if any, is provided by the original manufacturer. Upon written request Contractor will attempt to pass through any such warranty to State.
38. **Conflicts and Ethics.** Contractor will uphold high ethical standards and is prohibited from: (a) holding or acquiring an interest that would conflict with this Contract; (b) doing anything that creates an appearance of impropriety with respect to the award or performance of the Contract; (c) attempting to influence or appearing to influence any State employee by the direct or indirect offer of anything of value; or (d) paying or agreeing to pay any person, other than employees and consultants working for Contractor, any consideration contingent upon the award of the Contract. Contractor must immediately notify the State of any violation or potential violation of these standards. This Section applies to Contractor, any parent, affiliate, or subsidiary organization of Contractor, and any subcontractor that performs Contract Activities in connection with this Contract.
39. **Compliance with Laws.** Contractor must comply with all federal, state and local laws, rules and regulations.
40. **Reserved.**
41. **Nondiscrimination.** Under the Elliott-Larsen Civil Rights Act, 1976 PA 453, MCL 37.2101, *et seq.*, and the Persons with Disabilities Civil Rights Act, 1976 PA 220, MCL 37.1101, *et seq.*, Contractor and its subcontractors agree not to discriminate against an employee or applicant for employment with respect

to hire, tenure, terms, conditions, or privileges of employment, or a matter directly or indirectly related to employment, because of race, color, religion, national origin, age, sex, height, weight, marital status, or mental or physical disability. Breach of this covenant is a material breach of this Contract.

42. **Unfair Labor Practice.** Under MCL 423.324, the State may void any Contract with a Contractor or subcontractor who appears on the Unfair Labor Practice register compiled under MCL 423.322.
43. **Governing Law.** This Contract is governed, construed, and enforced in accordance with Michigan law, excluding choice-of-law principles, and all claims relating to or arising out of this Contract are governed by Michigan law, excluding choice-of-law principles. Any dispute arising from this Contract must be resolved in Michigan Court of Claims. Contractor consents to venue in Ingham County, and waives any objections, such as lack of personal jurisdiction or *forum non conveniens*. Contractor must appoint agents in Michigan to receive service of process.
44. **Non-Exclusivity.** Nothing contained in this Contract is intended nor will be construed as creating any requirements contract with Contractor. This Contract does not restrict the State or its agencies from acquiring similar, equal, or like Contract Activities from other sources.
45. **Force Majeure.** Neither party will be in breach of this Contract because of any failure arising from any disaster or acts of god that are beyond their control and without their fault or negligence. Each party will use commercially reasonable efforts to resume performance. Contractor will not be relieved of a breach or delay caused by its subcontractors. If immediate performance is necessary to ensure public health and safety, the State may immediately contract with a third party.
46. **Dispute Resolution.** The parties will endeavor to resolve any Contract dispute in accordance with this provision. The dispute will be referred to the parties' respective Contract Administrators or Program Managers. Such referral must include a description of the issues and all supporting documentation. The parties must submit the dispute to a senior executive if unable to resolve the dispute within 15 business days. The parties will continue performing while a dispute is being resolved, unless the dispute precludes performance. A dispute involving payment does not preclude performance.

Litigation to resolve the dispute will not be instituted until after the dispute has been elevated to the parties' senior executive and either concludes that resolution is unlikely, or fails to respond within 15 business days. The parties are not prohibited from instituting formal proceedings: (a) to avoid the expiration of statute of limitations period; (b) to preserve a superior position with respect to creditors; or (c) where a party makes a determination that a temporary restraining order or other injunctive relief is the only adequate remedy. This Section does not limit the State's right to terminate the Contract.
47. **Media Releases.** News releases (including promotional literature and commercial advertisements) pertaining to the Contract or project to which it relates must not be made without prior written State approval, and then only in accordance with the explicit written instructions of the State.
48. **Website Incorporation.** The State is not bound by any content on Contractor's website unless expressly incorporated directly into this Contract.
49. **Order of Precedence.** In the event of a conflict between the terms and conditions of the Contract, the exhibits, a purchase order, or an amendment, the order of precedence is: (a) the purchase order; (b) the amendment; (c) Exhibit A; (d) any other exhibits; and (e) the Contract.
50. **Severability.** If any part of this Contract is held invalid or unenforceable, by any court of competent jurisdiction, that part will be deemed deleted from this Contract and the severed part will be replaced by agreed upon language that achieves the same or similar objectives. The remaining Contract will continue in full force and effect.
51. **Waiver.** Failure to enforce any provision of this Contract will not constitute a waiver.
52. **Survival.** The provisions of this Contract that impose continuing obligations, including warranties and representations, termination, transition, insurance coverage, indemnification, and confidentiality, will survive the expiration or termination of this Contract.

53. **Entire Contract and Modification.** This Contract is the entire agreement and replaces all previous agreements between the parties for the Contract Activities. This Contract may not be amended except by signed agreement between the parties (a “**Contract Change Notice**”).

54. **Rights to Products upon Purchase.** Subject to these terms and conditions, STATE is granted only a non-exclusive, non-transferable, personal, non-sublicensable right under Illumina’s Core IP to use the Product only in STATE’s facility only for STATE’s Research Use. “**Research Use**” means use for internal research (which includes research services provided to third parties), **specifically excluding any use that** (a) is not in accordance with the product’s specifications or documentation, (b) requires grants of rights or a license to Application Specific IP, (c) is a re-use of a previously used consumable, (d) is the disassembling, reverse-engineering, reverse-compiling, or reverse-assembling of the product, (e) is the separation, extraction, or isolation of components of the product or other unauthorized analysis of the product, (f) gains access to or determines the methods of operation of the product, (g) is the use of non-Illumina reagent/consumables with Illumina’s Hardware (does not apply if the specifications or documentation state otherwise), (h) is the transfer to a third-party of, or sub-licensing of, software or any third-party software, or (i) is a clinical, diagnostic, or other non-research use of the Product. All Software, whether provided separately, installed on, or embedded in a product, is licensed to STATE, not sold. STATE agrees that the first sentence of this Section is designed to and does alter the effect of the exhaustion of patent rights that would otherwise result if the sale was made without restriction. Except as expressly stated in this Section no right or license under any Illumina intellectual property rights is or are granted, expressly, by implication, or by estoppel, to STATE hereunder “**Application Specific IP**” means the intellectual property owned by or controlled by Illumina and Illumina’s affiliates that pertain to or cover aspects or features of the product (and use thereof) only with regard to specific field(s) or specific application(s). Application Specific IP excludes all Core IP. “**Core IP**” means the intellectual property owned or controlled by Illumina and Illumina’s affiliates, as of the date the Product ships, that pertain to or cover aspects or features of the Product (or use thereof) that are common to the Product in all applications and all fields of use. Application Specific IP and Core IP are separate, non-overlapping, subsets of all intellectual property owned or controlled by Illumina and Illumina’s affiliates. By way of non-limiting example, Illumina and Illumina’s affiliates’ intellectual property rights for non-invasive pre-natal testing, for specific diagnostic methods, for specific forensic methods, and for specific nucleic acid biomarkers, sequences, or combinations of biomarkers or sequences are examples of Application Specific IP. STATE agrees that (i) STATE’s use of product in any manner or for any purpose other than Research Use is a breach of these terms and conditions, (ii) actual knowledge by Illumina, or Illumina’s affiliates, that STATE is using Product in any manner or for any purpose other than Research Use does not (A) waive or otherwise limit any rights that Illumina, or Illumina’s affiliates, may have as a result of such use of the product, including without limitation, any rights or remedies available under these terms and conditions, and any rights or remedies available at law or in equity, (B) grant STATE a license to any intellectual property owned or controlled by Illumina or Illumina’s affiliates whether by implication, estoppel, or otherwise with respect to such use of the product, and (iii) any trade usage, and any course of performance or course of dealing between Illumina and STATE, will not be used to interpret these terms and conditions, including without limitation, the scope of the Research Use rights for product conferred under this Section.

STATE is solely responsible for determining whether STATE has all intellectual property rights that are necessary for STATE’s intended uses of the Product, including without limitation, any rights from third parties or rights from Illumina, or Illumina’s affiliates, to Application Specific IP (collectively “Other IP”). Illumina makes no guarantee or warranty.

55. **Regulatory.** The Product is labeled For Research Use Only. State acknowledges that (i) the Product has not been approved, cleared, or licensed by the United States Food and Drug Administration or any other regulatory entity whether foreign or domestic for any specific intended use, whether research, commercial, diagnostic, or otherwise, and (ii) State must ensure it has any regulatory approvals that are necessary for State’s intended uses of the Product. State further agrees to comply with all applicable laws and regulations when using, maintaining, and disposing of Product.